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Written statement* submitted by the International Commission of Jurists, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[14 February 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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UPR recommendations on impunity: Lack of progress in Nepal

1 In 2012, the Government of Nepal adopted a plan to implement the recommendations made during its 2011 Universal Periodic Review (UPR).[1] However, it has failed to take necessary measures to implement these recommendations. In particular, the International Commission of Jurists (ICJ) is concerned about the failure to implement the recommendations for strengthening the National Human Rights Commission (NHRC),[2] drafting of a constitution that is consistent with international legal principles, the protection of human rights,[3] rule of law and the right to effective remedy,[4] the establishment of credible transitional justice measures,[5] and the end of impunity.[6]

2 ICJ is concerned about the independence of the NHRC, as the current legislation removed guarantees contained in the 1997 law, inconsistent with UPR recommendations 106.7 and 106.8. Furthermore, on 16 September 2013, the government allowed the terms of all commissioners to lapse, leaving the commission vacant. The commissioners had drawn attention to the end of their terms months ago and had called on the government to find a solution so the country's national human rights institution would not be left without membership. The government also has failed to implement NHRC recommendations on impunity. The Commission has received 11407 complaints since its establishment in 2001, of which 4510 had been adjudicated as of July 2013. According to the NHRC report, only 14% of its recommendations have been implemented in full, 48% have been implemented partially and 38% have not been implemented at all. Most importantly, NHRC recommendations for prosecution for serious crimes remain totally unimplemented.[7]

3 Despite repeated orders from the courts, including the Supreme Court of Nepal, police routinely refuse to register First Information Reports (FIR) concerning conflict-era cases.[8] For example on 4 October 2013, the Conflict Victims Committee Bardiya attempted to file six cases of extrajudicial killing that allegedly occurred during the conflict. The District Police Office in Bardiya refused to file the cases, contending that incidents that took place during the conflict could only be considered by the Truth and Reconciliation Commission (TRC). This clearly defies the UPR recommendation in relation to effective investigation of human rights violations.

4 The Government of Nepal has not taken any measure to ensure that crimes under international law and other criminal abuses of human rights, including enforced disappearance, torture and other similar ill-treatment, including sexual violence, constitute crimes under domestic law in Nepal.

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[1] The recommendations are contained in Human Rights Council, *Report of the Working Group on the Universal Periodic Review Nepal*, A/HRC/17/5, 8 March 2011.

[2] Recommendations 106.7 and 106.8

[3] Recommendations 106.26, 106.35, 107.5, 107.10, 107.15.

[4] Recommendations 106.3, 106.7, 106.25, 106.38, 107.2, 107.17, 107.24, 108.1, 108.12, 108.15, 108.17, 108.18, 108.19, 108.22, 108.23, 108.26, 108.29.

[5] Recommendations 106.33, 106.34, 106.35, 106.36, 107.25, 108.30.

[6] Recommendations 107.2, 108.24, 108.25.

[7] See 13 years of NHRC, the status of the implementation of the NHRC recommendation, http://www.nhrcnepal.org/nhrc_new/doc/newsletter/13_years_report.pdf

[8] Recommendations 106.37, 107.24, 108.18 and 108.30. Article 116 of the Interim Constitution states that any order issued by the Supreme Court in the course of the hearing of a case shall be binding on the Government of Nepal and all its offices and courts. The Supreme Court's *State Cases Act of Nepal* obliges the Nepal Police to register FIRs immediately if officials receive these petitions either orally or in writing. The failure of the police to register the FIRs, in addition to undermining the independence of the judiciary and administration of justice, results in the failure of Nepal to discharge its obligations to engage the criminal responsibility of persons responsible for serious human rights violations. When FIRs are registered, the police still typically fail to carry out their duty to investigate.

5 Of similar concern is the exclusion of victims of torture and other ill-treatment, including sexual violence, from the definition of "conflict victim". This deprives victims such as Dhaniram Chaudhari and Bhagiram Chaudhari from the forms of victim support they should receive.[9]

6 Nepal has been unwilling establish a credible transitional justice process as required by the UPR recommendations.[10] On 14 March, the President of Nepal approved an Ordinance to establish a "Commission on Investigation of Disappeared Persons, Truth and Reconciliation 2069 (2013)." Victims and civil society organizations, with the assistance of ICJ lawyers, subsequently filed two separate writs on 24 March 2013, challenging the constitutionality of the Ordinance, and its consistency with international law, before the Supreme Court. On 2 January 2014, the Supreme Court declared the Ordinance on TRC void on the ground of its inconsistency with the Interim Constitution and international law. It issued a Mandamus to the State of Nepal ordering the following:

- To form two separate transitional justice commissions: a "Truth and Reconciliation Commission" and a "Commission of Inquiry on Enforced Disappeared Persons;"[11]
- To criminalize enforced disappearances and other serious crimes;
- To ensure that there is no amnesty provision for serious crimes in the formation of the two separate commissions, among the various provisions;
- To repeal the 35-day statute of limitations for prosecution;
- To ensure that legal arrangements for the Commissions fully comply with international standards, including in particular a vetting process to guarantee the impartiality of the commission members and to ensure that only individuals who were not involved in the conflict and who do not have any record of human rights violations will be selected;
- To amend or reform the Ordinance or draft new legislation with the assistance of an expert team (consisting of conflict experts, organizations representing victims' interests, human rights law experts and interested stakeholders), in order to prescribe standards and procedures in relation to amnesty;
- To arrange for the necessary legal and institutional measures for effective victim and witness protection mechanisms; and
- To make any other necessary legal, administrative, institutional or other required arrangements for a reparations program.

7 On 27 January 2014 the Government reintroduced the Ordinance, with no amendments, in the meeting of the Legislative-Parliament. This directly contravened the Supreme Court orders and UPR recommendation. This also further demonstrates the failure of executive authorities to respect and implement judicial decisions.[12]

8 The failure of Nepal to move forward with implementation of the UPR Recommendations is evidence of an abnegation of the rule of law, accountability, and the rights of victims in Nepal. Without immediate measures, Nepal, at its 2015 Universal Periodic Review, will be unable to demonstrate any substantial progress on the recommendations from its 2011 review. To end Nepal's failures to respect and ensure the rule of law, accountability and the rights of victims, and to avoid a serious setback for Nepal's standing at the Council, the ICJ calls on Nepal urgently:

a to ensure the immediate launch and speedy progress of effective and impartial investigations into all allegations of extrajudicial killing by the security

[9] See ongoing case in the Supreme Court, *Dhaniram Chaudhari v Government of Nepal*, Chaudhari is from the Bardiya District and is not currently receiving any form of government help or assistance due to the limited nature of the guidelines for the victims of torture in conflict and the definition of torture.

[10] Recommendations 106.34, 106.35, 106.36 , 106.37 and 106.38.

[11] Recommendations 106.33, 106.34 and 107.25.

[12] Recommendation 106.38.

forces and by the Maoists during the armed conflict, capable of bringing those responsible to justice in fair trials;[13]

b to ensure that the Government fully implements the Supreme Court decision of 2 January 2014, which orders the Government (among other things) to establish two separate commissions of inquiry;

c to ensure that all crimes under international law and other criminal abuses of human rights, including torture and similar ill-treatment (which includes rape and other sexual violence), and enforced disappearance, constitute criminal offences under Nepalese law;

d to ratify the International Convention for the Protection of All Persons from Enforced Disappearance and accede to the Rome Statute of the International Criminal Court (ICC);[14]

e to invite and make all speedy and practical arrangements for interested mandates of the Human Rights Council to visit Nepal, including the follow-up visit of the Working Group on Enforced and Involuntary Disappearances, the Special Rapporteur on torture and the Special Rapporteur on extrajudicial, summary or arbitrary execution[15] and the Special Rapporteur on promotion of truth, justice, reparation and guarantees of non-recurrence.

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[13] Recommendations 106.35, 108.24 and 108.25.
[14] Recommendation 108.1.
[15] Recommendation 108.19.